

REMARKS/ARGUMENTS

Applicant thanks the Examiner for his comments during a 17 June 2004 telephone interview which have greatly helped in preparing this response.

I. DRAWINGS

The Office Action has objected to the drawings under 37 CFR 1.84(p)(4).

Applicant has discussed the status of the drawings with the Examiner during the 17 June 2004 telephone interview. The amendments to the Specification have deemed the requested drawing corrections moot.

Applicant respectfully requests that the Examiner withdraw the objections under 37 CFR 1.84(p)(4).

II. SPECIFICATION

The specification has been amended to correct minor editorial problems and to clarify terms in the text. No new matter has been entered. Applicant notes that the previous response contained incorrect page and line numbers and requests that the Examiner call the Applicant's attorney, Kirk Wong, at (408) 414-1214 if any problems have arisen due to the incorrect page and line numbers in order to correct any entries in to the Specification.

III. SPECIFICATION

The Office Action has objected to the amendment on page 9, lines 5-10 under 35 U.S.C. 132 because it introduces new matter. As discussed with the Examiner during the

17 June 2004 telephone interview, the “higher level server DNS” is supported and related to the mask that is discussed in the amended paragraph. The mask is dependent upon the size of the network and it is well known that masking elements from the IP address can provide the address of a higher level server to the client.

Applicant respectfully requests that the Examiner withdraw the objections under 35 U.S.C. 132.

IV. SPECIFICATION

The Office Action has objected to the amendment on page 9, lines 29 - page 10, line 5 under 35 U.S.C. 132 because it introduces new matter. As discussed with the Examiner during the 17 June 2004 telephone interview, the “dynamic BG hop count measured” is supported by the previous sentence in the same paragraph: “This is because the dynamic hop count to the BG takes some time to actually measure”. The confusion of the missing support provided arose due to the incorrect page and line numbers in the amendment. The paragraph was not new, only some elements of the existing paragraph were amended. If the amendment from the previous response was entered on the incorrect page and line numbers, the Examiner is urged to contact the Applicant’s attorney as requested above.

Applicant respectfully requests that the Examiner withdraw the objections under 35 U.S.C. 132.

V. SPECIFICATION

The Office Action has objected to the amendment on page 11, lines 8 - 11 under 35 U.S.C. 132 because it introduces new matter. As discussed with the Examiner during

the 17 June 2004 telephone interview, incorrect page and line numbers created the misunderstanding. No new matter was entered, the correct page and line numbers (page 10, lines 14-17) have been used in this response for the amendment to the existing paragraph. As noted above, if the amendment from the previous response was entered on the incorrect page and line numbers, the Examiner is urged to contact the Applicant's attorney as requested above.

Applicant respectfully requests that the Examiner withdraw the objections under 35 U.S.C. 132.

VI. STATUS OF CLAIMS

Claims 1-15 remain in this application. Claims 1, 6, and 11 have been amended. It should be noted that Applicant has elected to amend said Claims solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making this amendment, Applicant has not and does not in any way narrow the scope of protection to which Applicant considers the invention herein to be entitled and does not concede, in any way, that the subject matter of such Claims was in fact taught or disclosed by the cited prior art. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

VII. CLAIM REJECTIONS – 35 U.S.C. § 112

The Office Action rejected Claims 3, 8, and 13 under 35 U.S.C. §112, first paragraph, as failing to comply with enablement requirement. The rejection is respectfully traversed. As discussed with the Examiner during the 17 June 2004 telephone interview, the “higher

level server” is supported and related to the mask that is discussed in the amended paragraph on page 8, lines 10-15. The mask is dependent upon the size of the network and it is well known that masking elements from the IP address can provide the address of a higher level server to the client.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §112, first paragraph.

VIII. CLAIM REJECTIONS – 35 U.S.C. § 102

The Office Action rejected Claims 1, 2, 4, 6, 7, 9, 11, 12, and 14 under 35 U.S.C. § 102(e) as being clearly anticipated by Shah et al., U.S. Patent No. 6,292,832 (Shah). The rejection is respectfully traversed.

Claims 1, 6, and 11 have been amended to clarify the invention and appear as follows:

1. A process for determining latency between multiple servers and a client across a network in a computer environment, comprising the steps of:
receiving a request for latency metrics on a content server;
wherein said latency metric request specifies a particular client;
providing a latency management table;
wherein said latency management table comprises a list of IP addresses
along with corresponding Border Gateway Protocol (BGP) hop
counts, dynamic hop counts, and Round Trip Times (RTT);
looking up the latency metric for said client in said latency management
table;
sending said latency metric to the requesting server;

wherein the BGP hop count for said client in said latency management table is used for said latency metric upon an initial request for said client; and

wherein the dynamic hop count and RTT data for said client in said latency management table are used for said latency metric for subsequent requests for said client.

6. An apparatus for determining latency between multiple servers and a client across a network in a computer environment, comprising:
 - a module for receiving a request for latency metrics on a content server;
 - wherein said latency metric request specifies a particular client;
 - a latency management table;
 - wherein said latency management table comprises a list of IP addresses along with corresponding Border Gateway Protocol (BGP) hop counts, dynamic hop counts, and Round Trip Times (RTT);
 - a module for looking up the latency metric for said client in said latency management table;
 - a module for sending said latency metric to the requesting server;
 - wherein the BGP hop count for said client in said latency management table is used for said latency metric upon an initial request for said client; and
 - wherein the dynamic hop count and RTT data for said client in said latency management table are used for said latency metric for subsequent requests for said client.

11. A program storage medium readable by a computer, tangibly embodying a program of instructions executable by the computer to perform method steps for determining latency between multiple servers and a client across a network in a computer environment, comprising the steps of:
 - receiving a request for latency metrics on a content server;
 - wherein said latency metric request specifies a particular client;
 - providing a latency management table;
 - wherein said latency management table comprises a list of IP addresses along with corresponding Border Gateway Protocol (BGP) hop counts, dynamic hop counts, and Round Trip Times (RTT);
 - looking up the latency metric for said client in said latency management table;
 - sending said latency metric to the requesting server;
 - wherein the BGP hop count for said client in said latency management table is used for said latency metric upon an initial request for said client; and
 - wherein the dynamic hop count and RTT data for said client in said latency management table are used for said latency metric for subsequent requests for said client.

As discussed with the Examiner during the 17 June 2004 telephone interview, Claims 1, 6, and 11 have been amended to clarify that the BGP hop count is used upon initial request for the client. After the initial request, the dynamic hop count and RTT

data are used for the latency metric. As discussed with the Examiner, this two stage calculation of the latency metric is not disclosed, taught, or contemplated by Shah.

Anticipation under 35 U.S.C. § 102 requires a reference to teach or disclose each and every element, limitation, or step of a claim. Since Claims 1, 6, and 11 include at least one element not found in Shah, the Shah patent does not anticipate Claims 1, 6, and 11 under 35 U.S.C. § 102.

Claims 1, 6, and 11 are allowable. Claims 2, 4 and 7, 9, and 12, 14 are dependent upon Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC § 102(e).

IX. CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected Claims 3, 8 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Shah (6,292,832) in view of what is well known in the art.

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 6, and 11, above. Claims 3 and 8 and 13 are dependent upon independent Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

X. CLAIM REJECTIONS – 35 U.S.C. § 103

The Office Action rejected Claims 5, 10, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Shah (6,292,832) in view of McCanne (6,415,323).

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 6, and 11, above. Claims 5 and 10 and 15 are dependent

upon independent Claims 1, 6, and 11, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

XI. CONCLUSIONS & MISCELLANEOUS

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Applicants believe that all issues raised in the Office Action have been addressed and that allowance of the pending claims is appropriate. Entry of the amendments herein and further examination on the merits are respectfully requested.


The Examiner is invited to telephone the undersigned at (408) 414-1214 to discuss any issue that may advance prosecution.

No fee is believed to be due specifically in connection with this Reply. To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. § 1.136. The Commissioner is authorized to charge any fee that may be due in connection with this Reply to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: July 13, 2004

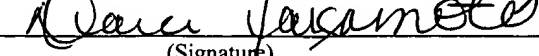

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

on July 13, 2004
(Date)

by 
(Signature)